

The case was dormant for a number of years.¹ On April 26, 2007 appellant filed a claim for recurrence of disability beginning June 19, 2006. He stopped work that day and returned to work on August 10, 2006. Appellant's Form CA-2a, recurrence of disability, stated that the recurrence happened when he got out of bed on June 19, 2006 and felt back pain and right leg numbness. He also indicated that his back pain never went away since his original injury.

In support of his claim, appellant submitted several dispensary records and treatment notes between 1993 and 1994. This included an August 11, 1994 treatment note from the San Diego Naval Hospital, which diagnosed low back pain after appellant moved a gear box from a work table to a cart on August 10, 1994. Also included was an August 16, 1994 treatment note diagnosing lower thoracic musculoskeletal strain after appellant picked up rotor dome gear.

In a July 14, 2006 treatment note, Dr. Roger Stoike, a Board-certified internist, diagnosed lumbosacral disc with nerve root compression. He noted appellant's complaint of pain and numbness from his right buttock to his right leg and stated that the condition started on June 19, 2006. Dr. Stoike also noted that appellant could return to full duty on September 1, 2006.

On August 29, 2006 Dr. Jerry Schulte, a radiologist, interpreted magnetic resonance imaging (MRI) scan results of appellant's lumbar spine. He assessed a three millimeter posterior protrusion of the L4-5 disc, degeneration of the L4-5 disc and no significant central canal or neuroforaminal stenosis.

In a January 4, 2007 progress note, Dr. Stoike concluded that appellant had an ongoing disability due to a recurring occupational back injury. He indicated that appellant had a loss of signal of the L4-5 disc due to disc degeneration and arthritis, which caused his back pain and numbness in the right lower extremity. Dr. Stoike noted that appellant could return to work on January 8, 2007 with restrictions of no prolonged sitting or standing. On April 6, 2007 he confirmed his January 4, 2007 findings stating that appellant had a recurring occupational back injury and noted that appellant could return to work on April 9, 2007 without restrictions.

In a September 26, 2007 letter, the Office advised appellant of the factual and medical evidence needed to establish his recurrence claim and provided him 30 days to submit additional information.

In a decision dated November 7, 2007, the Office denied appellant's recurrence claim finding that the evidence was insufficient to establish that the recurrent disability resulted from the accepted lumbosacral sprain.

Following the decision, appellant submitted additional evidence consisting of medical reports already of record. He also submitted a June 12, 1984 medical report of Dr. A.G. Dycaco who evaluated appellant for preemployment purposes.

¹ The Board notes that certain early portions of appellant's case record could not be retrieved by the Office from the Federal Records Center.

On September 8, 2008 appellant requested reconsideration. He submitted a statement noting that he sustained his original injury on May 5, 1993 and subsequently reinjured his back on May 11 and 17, 1993 and August 10, 1994. Appellant noted he had intermittent episodes of severe back pain, which occurred on June 19, 2006. He also submitted an August 3, 2007 progress note from Dr. Stoike, who noted his previous findings of ongoing disability due to recurring occupational back injury that started June 19, 2006. Dr. Stoike also confirmed loss of signal of the L4-5 disc due to disc degeneration and arthritis, which caused appellant's back pain and right lower extremity numbness.

In a September 19, 2008 decision, the Office denied appellant's request for reconsideration without a merit review finding that the evidence submitted was repetitious and cumulative.

LEGAL PRECEDENT -- ISSUE 1

A recurrence of disability means "an inability to work after an employee has returned to work, caused by a spontaneous change in a medical condition which has resulted from a previous injury or illness without an intervening injury or new exposure to the work environment that caused the illness."² A person who claims a recurrence of disability due to an accepted employment-related injury has the burden of establishing by the weight of the substantial, reliable and probative evidence that the disability for which she claims compensation is causally related to the accepted injury. This burden of proof requires that an employee furnish medical evidence from a physician, who on the basis of a complete and accurate factual and medical history, concludes that the disabling condition is causally related to the employment injury and supports that conclusion with sound medical reasoning.³ Where no such rationale is present, medical evidence is of diminished probative value.⁴

ANALYSIS -- ISSUE 1

The Office accepted that appellant sustained a lumbosacral joint ligament sprain on May 5, 1993. Appellant returned to regular-duty work on August 28, 1994. He subsequently filed a recurrence of disability claim April 26, 2007 alleging back pain, right leg numbness and disability beginning June 19, 2006. However, appellant did not submit sufficient reasoned medical evidence to establish that his present condition was causally related to his accepted injury.

On July 14, 2006 Dr. Stoike noted appellant's complaint of pain in his right buttock and leg and diagnosed lumbosacral disc with nerve root compression. In reports dated January 4 and April 6, 2007, he indicated that appellant had a recurring occupational back injury. Dr. Stoike noted that appellant's disc degeneration and arthritis caused a loss of signal of his L4-5 disc. However, none of these reports explain how appellant's nerve root compression, disc

² R.S., 58 ECAB ____ (Docket No. 06-1346, issued February 16, 2007); 20 C.F.R. § 10.5 (x).

³ See S.S., 59 ECAB ____ (Docket No. 07-579, issued January 14, 2008).

⁴ See *Ronald C. Hand*, 49 ECAB 113 (1957).

degeneration or arthritis arose from his accepted injury of lumbosacral joint ligament sprain and caused appellant back pain and right leg numbness. Furthermore, none of his reports provide medical reasoning to support that appellant's back injury was a spontaneous change in a medical condition related to the accepted lumbosacral sprain. Dr. Stoike also did not indicate an awareness of appellant's original May 5, 1993 injury or provide any evidence of bridging symptoms.⁵ Additionally, he did not explain how other back injuries noted by appellant as being sustained on May 11 and 17, 1993 and August 10 and 16, 1994 affected his present condition nor did he distinguish how these injuries, sustained after the accepted employment condition but before the alleged recurrence, impacted the current diagnosis.⁶

Dr. Schulte's diagnostic report of appellant's lumbar spine concluded protrusion and degeneration of the L4-5 disc. However, he did not provide an opinion as to the cause of his findings. Medical evidence that does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship.⁷ Consequently, appellant has not met his burden of proof to establish that he sustained a recurrence of disability on June 19, 2006 causally related to his May 5, 1993 employment injury.

LEGAL PRECEDENT -- ISSUE 2

To require the Office to reopen a case for merit review under section 8128(a), the Office's regulations provide that the evidence or argument submitted by a claimant must: (1) show that the Office erroneously applied or interpreted a specific point of law; (2) advance a relevant legal argument not previously considered by the Office; or (3) constitute relevant and pertinent new evidence not previously considered by the Office.⁸ Section 10.608(b) of Office regulations provides that when an application for reconsideration does not meet at least one of the three requirements enumerated under section 10.606(b)(2), the Office will deny the application for reconsideration without reopening the case for a review on the merits.⁹

ANALYSIS -- ISSUE 2

Appellant's reconsideration request did not allege or demonstrate that the Office erroneously applied or interpreted a specific point of law. Additionally, he did not advance a relevant legal argument not previously considered by the Office. Consequently, appellant is not entitled to a review of the merits of his claim based on the first two requirements, as noted.

⁵ See *Mary A. Ceglia*, 55 ECAB 626 (2004) (to establish that the claimed recurrence of the condition was caused by the accepted injury, medical evidence of bridging symptoms between appellant's present condition and the accepted injury must support the physician's conclusion of a causal relationship).

⁶ See *M.W.*, 57 ECAB 710 (2006) (medical conclusions based on an inaccurate or incomplete factual history are of diminished probative value).

⁷ *K.W.*, 59 ECAB ____ (Docket No. 07-1669, issued December 13, 2007).

⁸ *D.K.*, 59 ECAB ____ (Docket No. 07-1441, issued October 22, 2007).

⁹ *K.H.*, 59 ECAB ____ (Docket No. 07-2265, issued April 28, 2008).

With respect to the third requirement, submitting relevant and pertinent new evidence, appellant submitted several dispensary reports dated between 1993 and 1994. These reports were duplicative and already of record. Additionally, appellant submitted Dr. Dyaico's June 12, 1984 report. However, as the report predates both the alleged recurrence and his original injury, it is not relevant to the present case. Appellant also submitted an August 3, 2007 progress note of Dr. Stoike. To the extent that Dr. Stoike indicated support for causal relationship by noting that appellant's recurring occupational back injury that started June 19, 2006, his report is cumulative as it merely restates his opinion that appellant has a recurring occupational back injury, as noted in the physician's January 4 and April 6, 2007 reports. The submission of evidence which repeats or duplicates evidence already in the case record does not constitute a basis for reopening a case.¹⁰

Therefore, the Office properly denied appellant's request for a review on the merits as he failed to meet any of the three requirements, noted above, for reopening a claim for merit review.

CONCLUSION

The Board finds that appellant failed to establish that he sustained a recurrence of disability beginning June 19, 2006 causally related to his accepted May 5, 1993 lumbosacral sprain. The Board also finds that the Office properly denied appellant's request for reconsideration without a merit review.

ORDER

IT IS HEREBY ORDERED THAT the Office of Workers' Compensation Programs' decisions dated September 19, 2008 and November 7, 2007 are affirmed.

Issued: April 13, 2009
Washington, DC

¹⁰ *Roger W. Robinson*, 54 ECAB 846 (2003).